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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09-284,816	06-14-1999	PHILIPPE MALCORPS	99-260	2849

75-AU 04/02/2003

BACHMAN & LAPONTE  
900 CHAPEL STREET SUITE 1201  
NEW HAVEN, CT 06510-2802

EXAMINER
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SHERRE, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04-02-2003

JS

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/284,816</b>	Applicant(s) <b>Malcorps et al.</b>
Examiner <b>Curtis E. Sherrer</b>	Art Unit <b>1761</b>



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Nov 12, 2002

2a)  This action is FINAL.      2b)      This action is non-final.

3)      Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 40-63 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)      Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 40-63 is/are rejected.

7)      Claim(s) \_\_\_\_\_ is/are objected to.

8)      Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)      The specification is objected to by the Examiner.

10)     The drawing(s) filed on \_\_\_\_\_ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)     The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)     The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)     Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)(1) or (f).

a) All b) Some\* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

### Attachments:

Notice of Allowance - PTO-144-A

Interview Summary - PTO-144a - Paper 16

Notice of Draftsperson's Patent Drawing Review - PTO-948

Notice of Informal Patent Application - PTO-156

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 40-49, 62 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 40, 62 or 63 are indefinite because the scope of the phrase "cooled condition" or "cooled state" is unknown.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Cock's Fine Brews (<http://www.notchturner.com/cocks/frutopen.htm>)(hereinafter Cock) in light of Ashurst (Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages (pages 174-6) in view of Line et al. (U.S. Pat. No. 4,355,110)(hereinafter Line). Additional Evidence has been supplied to show that Apple Ale was in production in 1995. See <http://www.newglarusbrewing.com/awards.html>.

The previously cited art teaches that found in the last Office Action. They do not teach the centrifugation of the beer. Line teaches notoriously well known use of a centrifuge for the treatment of cooled wort to remove the trub (see Example 15). It would have been obvious to those of ordinary skill in the art to process the beer of New Glarus or Cock using a centrifuge as taught by Line in order to remove the trub.

6. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the well known mixed drink "Snakebite" in view of Lite.

7. Snakebite teaches that cited previously but does not teach the centrifugation of cooled wort. Line teaches that cited above. It would have been obvious to those of ordinary skill in the art to process of producing Snakebite using a centrifuge as taught by Line in order to remove the trub.

**Serial Number: 09/284,816**

Art Unit: 1761

### *Response to Arguments*

8. It is noted that applicants argue that their invention relates to the production of a “common conventional beer.” In response to applicant's argument that the references fail to show certain features of applicants' invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### *Conclusion*

9. No claim is allowed.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of

**Serial Number: 09/284,816**

**5**

**Art Unit: 1761**

The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The **fax phone number** for this Group is (703)-305-3602.

12. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer  
Primary Examiner  
January 16, 2003